

¹ Nancy A. Berryhill became acting Commissioner of Social Security on January 23, 2017, replacing Carolyn W. Colvin.

extend the time to file an appeal. *Id.* at p. 38.

In this case, the final decision was issued and mailed on April 26, 2017. (ECF No. 9-1, pp. 36-41). Allowing five additional days for mailing, a civil action must have been filed no later than June 30, 2017. There is no indication that Plaintiff filed a request to extend the time. The instant action was not filed until August 11, 2017. (ECF No. 1). Thus, there is no question that the Complaint is untimely.

A statute of limitations period may be equitably tolled, however, “(1) where the defendant has actively misled the plaintiff respecting the plaintiff's cause of action; (2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or (3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum.” *Kramer v. Comm'r of Soc. Sec.*, 461 F. App'x 167, 168–70 (3d Cir. 2012), *quoting*, *Oshiver v. Levin, Fishbein, Sedran & Berman*, 38 F.3d 1380, 1387 (3d Cir.1994). None of these circumstances appear to exist in the record. In Response to the Motion to Dismiss, *pro se* Plaintiff merely states that he opposes the motion. (ECF No. 11). As such, I find that the doctrine of equitable tolling does not apply. Consequently, I find that Plaintiff's Complaint is untimely and dismissal of the case is warranted.

An appropriate order shall follow.

